

IN THE COURT OF APPEAL OF TANZANIA

AT TABORA

(CORAM: MJASIRI. J.A, MUGASHA, J.A. And LILA, J.A.)

CIVIL APPLICATION NO. 248/11 OF 2017

MAWAZO ABEID RIJA APPLICANT

VERSUS

JOEL JELILI NOAH RESPONDENT

**(Application Arising from the decision of the High Court of Tanzania
at Tabora)**

(Rumanyika, J.)

dated the 19th day of August, 2015

in

DC. Civil Appeal No. 2 of 2015

RULING OF THE COURT

14th & 19th February, 2018

LILA, J.A.:

This is an application for striking out a Notice of Appeal lodged on 5/6/2017 against the decision of the High Court (Rumanyika, J.) in DC. Civil Appeal No. 2 of 2015.

A brief background of the matter is this. JOEL JELILI NOAH, the respondent, was a losing party in the High Court in DC. Civil Appeal No.

2 of 2015. That decision was delivered on 19/8/2015. Dissatisfied, he sought to try his luck in the Court. He accordingly lodged his Notice of Appeal with the Court on 26/8/2015 just seven days after the delivery of the decision sought to be impugned. The applicant passionately kept waiting for an appeal to be lodged but nothing was done till 2/6/2017 when he lodged the present application by way of a notice of motion under Rules 89(2), 48(1) and 49(1) of the Tanzania Court of Appeal Rules, 2009 (the Rules) seeking for an order that the Respondent's Notice of Appeal and application for stay of execution of the decree in DC. Civil Appeal No. 2 of 2015 to be struck out.

At the hearing of the application, both parties appeared in person and unrepresented. They had earlier on filed written submissions in support and in opposition to the application which they adopted to be part of their submissions.

Before us, the parties had very little to say. The applicant simply urged the Court to grant his application with costs. The respondent, in the first place, admitted that he was duly served with the copy of the application contrary to what he had indicated in his reply submissions.

He, further conceded that he was yet to file the appeal but he attributed his inability to lodge the appeal within time to his falling sick after filing the notice of appeal. He also said that he spent a considerable time to defend an application for execution lodged by the applicant before the trial court. On that account, he urged the Court to dismiss the application with costs.

Before embarking in the determination of the application we find it wanting that we should give our stance in respect of the application for striking out an application for stay of execution allegedly filed by the respondent in this Court (Tabora Sub-registry).

The applicant has annexed, in his application, a photostat copy of the notice of motion showing that Joel Jelili Noah, the respondent, had instituted an application for stay of execution of the decree in DC. Civil Appeal No. 2 of 2015 in this Court. As the record bears out, that application was filed on 31/8/2015. Unfortunately, the relevant record was not placed and was actually not among the cases cause listed in this session by the Registrar. We accordingly refrained from taking any legal actions in respect of the application to strike out the application

for stay of execution lodged by the respondent which seems to be still pending in our registry. The same has to wait for the right opportunity.

Given the above circumstances, we asked the parties to argue on the application to strike out the notice of appeal only.

As indicated above, the parties relied so much on their respective submissions they had filed and actually the respondent conceded not having taken steps to file the appeal within sixty days due to ill-health and time he spent in defending the execution proceedings initiated by the applicant in the trial court.

This application has been brought under Rule 89 (2) of the Rules. That Rule states:

"(2). Subject to the provisions of sub rule (1), a respondent or other person on whom a notice of appeal has been served may at any time, either before or after the institution of the appeal, apply to the Court to strike out the notice or the appeal, as the case may be, on the ground that no appeal lies or that some essential step in the proceedings has not

been taken or has not been taken within the prescribed time”.

The applicant in the present application is seeking to move the Court to strike out the notice of appeal on the ground that the respondent did not lodge an appeal within the required time. The respondent conceded not lodging an appeal within time but for a reason.

The institution of appeals is provided for under the provisions of Rule 90(1) of the Rules which requires the appeal be lodged in Court within sixty days of the date when the notice of appeal was lodged. However, the respondent can rely on the exception to that Rule in counting the sixty days which permits discounting the time as will be certified by the Registrar of the High Court as having been required for the preparation and delivery to the appellant of a copy of proceedings in the High Court. An appeal can also be filed outside the sixty days if the appellant is granted extension of time either by the Court under Rule 11 of the Rules or the High Court under section 11(1) of the Appellate Jurisdiction Act, Cap 141, R. E. 2002.

The essence of the above provisions of the Rules need not be overemphasized. The Court had an opportunity to expound the reasons in the case of **Amina Aden Ally V. Gavita Mohamed**, Civil Application No. 4 of 2009, (unreported.). This Court categorically stated: -

"It is settled that Rules of the Court must be respected and adhered to least it leads to miscarriage of justice. He who comes to Court to prosecute a case or an appeal must see to it that essential steps are taken within time as prescribed by the relevant law. Applying delaying tactics leads to nothing less than causing unnecessary harm to the adverse party."

In the instant matter, it is, indeed clear that the respondent herein has not complied with the provisions of Rule 90(1) of the Rules. The record shows that the judgment in DC. Civil Appeal No. 2 of 2015 was delivered on 19/8/2015. The notice of appeal was lodged on 26/8/2015. Thereafter the respondent did not take any further action

including filing an appeal. No extension was sought and granted. There is also none pending in Court. The reasons he has assigned for the delay are of assistance in case he is to seek for extension of time to file both the notice of appeal and the appeal. In the meantime, they are irrelevant.

Due to the respondent's failure to take an essential step (filing an appeal within time) in this case, it will follow that the application has merit. We accordingly grant it. The notice of appeal filed on 26/8/2015 is struck out with costs.

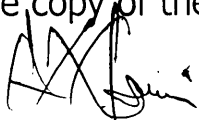
DATED at **TABORA** this 15th day of February, 2018.

S. MJASIRI
JUSTICE OF APPEAL

S. E. A. MUGASHA
JUSTICE OF APPEAL

S. A. LILA
JUSTICE OF APPEAL

I certify that this is a true copy of the original.


A.H. MSUMI
DEPUTY REGISTRAR
COURT OF APPEAL